IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 288 OF 2005

Subra @ Subramanyam Muttu Devendra ..Applicant.

V/s.

The State of Maharashtra .. Respondent.

Shri S.V. Kotwal with S.S.Bhandari for Applicant.
Shri D.R. More, APP for Respondent - State.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 16, 2005

PC :-

. Heard the learned counsel for the parties. Perused the record.

2. The applicant is arrested in connection with C.R. No.103/2004 alongwith five other accused. In so far as the applicant is concerned, no recovery has been made from his house or from his person. The only evidence pressed into service against the applicant by the prosecution, as is pointed out by the learned APP, on instructions, is memorandum of statement of the applicant himself. On reading the said memorandum, it gives an impression that the applicant had knowledge about the parcel kept in his house by the co-accused.

It is pointed out that besides this memorandum, no other material is available to indicate complicity of the applicant in the commission of the offence. The memorandum of statement is recorded under section 27 of the Evidence Act, which by itself will have no evidentiary value to establish the guilt of the applicant. This contention was specifically raised before the lower court but the lower court has brushed it aside by saying that the admissibility of that evidence can be considered only at the trial. Indeed it is so, but in matters such as the present one, the court has to record a prima facie view as to whether there are reasonable grounds to believe that the accused is guilty of the alleged offence. As no other evidence is forthcoming and the only piece of evidence being memorandum of statement which will have no evidentiary value to bring home guilt of the accused, it necessarily follows that the court will have to record an opinion, prima facie, that there are reasonable grounds to believe that the applicant accused is not guilty of the alleged offence. Reliance was placed on behalf of the applicant before the lower court on the decision of the Apex Court in the case of Suresh Budharmal Kalani Alias Pappu Kalani vs. State of Maharashtra, reported in 1998 Supreme

Court Cases (Cri.) 1625, which once again has been brushed aside by the trial court on the reasoning that the principle underlying that decision will be applicable only at the stage of discharge and not for the purpose of bail. In other words, the approach of the court below is unacceptable. As mentioned earlier, there is no legal evidence forthcoming to establish the guilt of the applicant in relation to the offence in question except the memorandum of statement of the applicant recorded under section 27 of the Evidence Act. Therefore, it will have to be held that there are reasons to belive that the applicant is not guilty of the alleged offence.

3. The next question, however, is whether the applicant should be granted bail on the above finding, especially when apprehension is expressed by the prosecution that the applicant is engaged in drug trafficking alongwith the other accused and if released on bail, may influence the prosecution witnesses and tamper with the evidence. This apprehension can be taken care of by imposing strict conditions on the applicant to the effect that the applicant shall not enter the limits of Greater Mumbai, New Mumbai and Thane Commissionerate during

the pendency of the trial except for attending the court proceedings on the fixed dates on which the trial is to proceed. Accordingly, the applicant is directed to be released on bail on the following conditions :-

(a) The Applicant is enlarged on bail in connection with C.R.No. 103/2004, registered with Anti Narcotic Cell, Mumbai on executing personal bond in the sum of Rs. 50,000/- (Rs. Fifty thousand only) with one or two local sureties in the like amount.

(b) The applicant shall not enter the limits of Greater Mumbai, New Mumbai and Commissionerate of Thane during the pendency of the trial except to attend the court proceedings on the fixed dates.

(c) The applicant shall inform his place of residence to the investigating officer within one week from the date of his release as well as to the Registrar of the trial court. In addition, the applicant shall regularly report to the local police station where he would reside, once in fortnight on Saturday between 10 a.m. to 2 p.m..

(d) The Applicant shall extend full co-operation to the investigating officer as and when called upon as well as for early disposal of the trial. If the trial court is of the opinion that he is responsible for delay in trial that fact be recorded in the Rozanama, which can be a ground for cancellation of bail.

(e) The applicant shall not influence the prosecution witness or tamper with the prosecution evidence in any manner whatsoever.

4. Ordered accordingly.

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